



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 27, 2023

Thai Viet Phan
Councilmember - Ward 1
Santa Ana City
20 Civic Center Plaza
Santa Ana, CA 92701

Re: Your Request for Advice
Our File No. A-23-052

Dear Ms. Phan:

This letter responds to your request for advice regarding Section 84308 of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

As an elected city councilmember, does Section 84308 of the Act limit contributions of more than \$250 from an organization the city may soon enter into a labor agreement with?

CONCLUSION

Although Section 84308 prohibits city councilmembers from accepting, soliciting, and directing contributions of more than \$250 from parties in a proceeding involving “a license, permit, or other entitlement for use,” the statutory definition of that term excludes labor contracts. Accordingly, the city entering into a labor agreement with an organization would not result in Section 84308 limiting contributions from that organization to city councilmembers. However, we caution that we do not express any opinion regarding any other laws outside of the Political Reform _____

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

Act that may apply regarding accepting, soliciting, or directing a contribution from a party appearing before the official.

FACTS AS PRESENTED BY REQUESTER

You are a member of the Santa Ana (“City”) City Council serving a four-year term representing Ward 1 of the City. You were elected in November 2020 and are currently the subject of a recall campaign. The City Clerk is currently in the process of reviewing the proponents’ blank petition pursuant to California Elections Code section 11042. At the time you requested advice, the City Clerk had not approved the petition for circulation.

As approved by the City Council on August 15, 2017, the Community Workforce Agreement (“CWA”) is an agreement entered into between the City and the Los Angeles/Orange Counties Building Trades Council (“Trades Council”) in order to establish the labor terms and conditions on certain construction projects, referred to in the CWA as “Project Work.” Project Work covered by the CWA is defined as construction contracts that exceed \$250,000 and all subcontracts flowing from such contracts. Any contractor entering into such a contract with the City must agree to be bound by the CWA. The primary parties to the CWA are the City and Trades Council. There are also 26 signatory craft councils and local unions to the CWA. The CWA expired in 2022.

On February 21, 2023, pursuant to a City Councilmember-generated request, a majority of the City Council gave direction to City staff to agendize a new proposed CWA for City Council consideration. This new CWA will be agendized for City Council consideration in the next two months.

ANALYSIS

Often referred to as the Act’s “pay to play” restrictions, Section 84308 aims to ensure that public officials are not biased by large campaign contributions, who might appear before them in a proceeding involving a license, permit or entitlement for use. As amended by SB 1439, effective January 1, 2023, Section 84308 applies to officers of local government agencies whose members are directly elected by voters, including city councilmembers. Section 84308 establishes certain requirements and prohibitions pertaining to an officer’s ability to take part in proceedings involving a license, permit, or other entitlement for use where a party or participant in the proceeding has contributed more than \$250 to the officer within the preceding 12 months. The statute similarly prohibits officers from receiving contributions exceeding \$250 from parties or participants for the 12 months following the date a final decision is rendered in such a proceeding.

You have asked whether the CWA would qualify as a “license, permit, or other entitlement for use” under Section 84308. Section 84308(a)(5) defines the term to mean “all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (*other than competitively bid, labor, or personal employment contracts*), and all franchises.” The CWA establishes the labor terms and conditions on construction contracts that exceed \$250,000 and all subcontracts flowing from such contracts. Therefore, as a labor contract, the CWA falls outside the scope of Section 84308.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: 
Kevin Cornwall
Counsel, Legal Division

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